

Social Security Administration that the individual did not perform services in that month for wages of more than the monthly exempt amount.

[45 FR 48117, July 18, 1980, as amended at 47 FR 46691, Oct. 20, 1982; 48 FR 4282, Jan. 31, 1983]

**§ 404.436 Excess earnings; months to which excess earnings cannot be charged because individual is deemed not entitled to benefits.**

Under the annual earnings test, excess earnings (as described in § 404.430) are not charged to any month in which an individual is deemed not entitled to a benefit. A beneficiary (i.e., the insured individual or any person entitled or deemed entitled on the individual's earnings record) is deemed not entitled to a benefit for a month if he is subject to a deduction for that month because of:

(a) Engaging in noncovered remunerative activity outside the United States (as described in §§ 404.417 and 404.418); or

(b) Failure to have a child in her care (in the case of a wife under age 65 or a widow or surviving divorced mother under age 62, as described in § 404.421); or

(c) Refusal by a person entitled to a child's insurance benefit based on disability to accept rehabilitation services (as described in § 404.422). (An insured individual's excess earnings are not charged against the benefit of a child entitled (or deemed entitled) on the insured individual's earnings record for any month in which the child is subject to a deduction for refusing rehabilitation services); or

(d) Refusal by an individual entitled to a disability insurance benefit to accept rehabilitation services as described in § 404.422 (e.g., a wife's excess earnings may not be charged against her benefits for months in which the disability insurance beneficiary on whose account she is entitled to wife's benefits incurs a deduction because he refuses rehabilitation services; also, a woman's earnings may not be charged against the mother's insurance benefit or child's insurance benefit she is receiving (on the earnings record of another individual) for months in which her husband refuses rehabilitation

services while he is entitled to a disability insurance benefit).

(e) Refusal by a person entitled before age 60 to a widow's/or to a widower's insurance benefit based on disability (before age 62 in the case of a widower's insurance benefit for months before 1973) to accept rehabilitation services (as described in § 404.422).

[32 FR 19159, Dec. 20, 1967, as amended at 38 FR 9429, Apr. 16, 1973; 38 FR 17716, July 3, 1973; 43 FR 8133, Feb. 28, 1978]

**§ 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings.**

For purposes of deductions because of excess earnings (as described in § 404.430), the benefit rate against which excess earnings are charged is the amount of the benefit (other than a disability insurance benefit) to which the person is entitled for the month:

(a) After reduction for the *maximum* (see §§ 404.403 and 404.404). The rate as reduced for the maximum as referred to in this paragraph is the one applicable to remaining entitled beneficiaries after exclusion of beneficiaries deemed not entitled under § 404.436 (due to a deduction for engaging in noncovered remunerative activity outside the United States, failure to have a child in her care, or refusal to accept rehabilitation services);

(b) After any reduction under section 202(q) of the Act because of entitlement to benefits for months before age 65 (this applies only to old-age, wife's, widow's, or husband's benefits);

(c) After any reduction in benefits payable to a person entitled (or deemed entitled; see § 404.420) on the earnings record of the insured individual because of entitlement on his own earnings record to other benefits (see § 404.407); and

(d) After any reduction of benefits payable to a person entitled or deemed entitled on the earnings record of an individual entitled to a disability insurance benefit because of such individual's entitlement to workmen's compensation for months after 1965 (see § 404.408).

[32 FR 19159, Dec. 20, 1967, as amended at 38 FR 17716, July 3, 1973; 43 FR 8133, Feb. 28, 1978]

**§ 404.439 Partial monthly benefits; excess earnings of the individual charged against his benefits and the benefits of persons entitled (or deemed entitled) to benefits on his earnings record.**

Deductions are made against the total family benefits where the excess earnings (as described in § 404.430) of an individual entitled to old-age insurance benefits are charged to a month and require deductions in an amount less than the total family benefits payable on his earnings record for that month (including the amount of a mother's or child's insurance benefit payable to a spouse who is deemed entitled on the individual's earnings record—see § 404.420). The difference between the total benefits payable and the deductions made under the annual earnings test for such month is paid (if otherwise payable under title II of the Act) to each person in the proportion that the benefit to which each is entitled (before the application of the reductions described in § 404.403 for the family maximum, § 404.407 for entitlement to more than one type of benefit, and section 202(q) of the Act for entitlement to benefits before retirement age) and before the application of § 404.304(f) to round to the next lower dollar bears to the total of the benefits to which all of them are entitled, except that the total amount payable to any such person may not exceed the benefits which would have been payable to that person if none of the insured individual's excess earnings had been charged to that month.

*Example:* A is entitled to an old-age insurance benefit of \$165 and his wife is entitled to \$82.50 before rounding, making a total of \$247.50. After A's excess earnings have been charged to the appropriate months, there remains a partial benefit of \$200 payable for October, which is apportioned as follows:

	Original benefit	Fraction of original	Benefit <sup>1</sup>
A .....	\$165	2/3	\$133
Wife .....	82.50	1/3	66

	Original benefit	Fraction of original total benefit	Benefit after deductions for excess earnings but before reduction for family maximum	Benefit reduced for maximum but without deductions for excess earnings	Benefit payable after both deductions and reductions (and rounded)
Insured Individual .....	\$100	2/3	50	100.00	75

	Original benefit	Fraction of original	Benefit <sup>1</sup>
Total .....	247.50	.....	199

<sup>1</sup> After deductions for excess earnings and after rounding per § 404.304(f).

[38 FR 9429, Apr. 16, 1973, as amended at 38 FR 17717, July 3, 1973; 43 FR 8133, Feb. 28, 1978; 48 FR 46149, Oct. 11, 1983]

**§ 404.440 Partial monthly benefits; prorated share of partial payment exceeds the benefit before deduction for excess earnings.**

Where, under the apportionment described in § 404.439, a person's prorated share of the partial benefit exceeds the benefit rate to which he was entitled before excess earnings of the insured individual were charged, such person's share of the partial benefit is reduced to the amount he would have been paid had there been no deduction for excess earnings (see example). The remainder of the partial benefit is then paid to other persons eligible to receive benefits in the proportion that the benefit of each such other person bears to the total of the benefits to which all such other persons are entitled (before reduction for the family maximum). Thus, if only two beneficiaries are involved, payment is made to one as if no deduction had been imposed; and the balance of the partial benefit is paid to the other. If three or more beneficiaries are involved, however, reapportionment of the excess of the beneficiary's share of the partial benefit over the amount he would have been paid without the deduction is made in proportion to his original entitlement rate (before reduction for the family maximum). If the excess amount involved at any point totals less than \$1, it is not reapportioned; instead, each beneficiary is paid on the basis of the last calculation.

*Example:* Family maximum is \$150. Insured individual's excess earnings charged to the month are \$25. The remaining \$125 is prorated as partial payment.